No. 271234 84187-0

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

KITTITAS COUNTY, a political subdivision of the State of Washington, BUILDING INDUSTRY ASSOCIATION OF WASHINGTON, CENTRAL WASHINGTON HOME BUILDERS ASSOCIATION, MITCHELL F. WILLIAMS, d/b/a MF WILLIAMS CONSTRUCTION CO., TEANAWAY RIDGE, LLC, KITTITAS COUNTY FARM BUREAU, and SON VIDA II,

Petitioners,

v.

KITTITAS COUNTY CONSERVATION, RIDGE, FUTUREWISE, and EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD,

Respondents.

CENTRAL WASHINGTON HOME BUILDERS ASSOCIATION'S, BUILDING INDUSTRY ASSOCIATION OF WASHINGTON'S, AND MITCHELL F. WILLIAMS, d/b/a MF WILLIAMS CONSTRUCTION CO.'S ANSWER TO MOTION FOR DIRECT REVIEW

Timothy M. Harris, WSBA No. 29906
Andrew C. Cook, WSBA No. 34004
Building Industry Association of Washington
111 21st Avenue SW
Olympia, WA 98507
(360) 352-7800

I. INTRODUCTION

The Central Washington Home Builders Association, the Building Industry Association of Washington, and Mitchell F. Williams, d/b/a MF Williams Construction Co. (collectively "Home Builders") respectfully submit this answer in response to Kittitas County Conservation's, Ridge's, and Futurewise's (collectively "Futurewise") motion for direct review of the above-titled case. The Home Builders disagree with a number of factual and legal arguments contained in Futurewise's motion. In addition, the Home Builders do not believe that, under the Administrative Procedure Act (APA), Futurewise is the proper party to be filing a motion for direct review. The Home Builders hereby adopt the arguments made by Kittitas County and file this response to Futurewise's motion.

II. ARGUMENT

Because the Kittitas County Superior Court has indicated that it would expedite the case and issue a decision within 60 days, and because RCW 36.70A.305 provides for expedited review of a Growth Management Hearings Board's determination of invalidity, the Home Builders believe that the proper forum at this juncture should be the Superior Court. Moreover, Futurewise is attempting to dictate the forum by filing a petition for review of the Eastern Washington Growth

Management Hearings Board's (Eastern Growth Board) decision when they were the prevailing party before the Board. In addition, Futurewise's arguments that denying its motion would be detrimental to the public interest and the parties' interests are not supported by the facts or the law.

A. The Home Builders and Kittitas County, Not Futurewise, Are the Proper Parties to Decide Whether to File the Petition for Review

Despite prevailing before the Eastern Growth Board, Futurewise is now attempting to take the Home Builders' and Kittitas County's place by filing a motion for direct review. This is not typically how the Administrative Procedure Act (APA) works. RCW 34.05.518(6)(a) provides in relevant part:

> Within thirty days after filing the petition for review with the superior court, a party may file an application for direct review with the superior court and serve the appropriate environmental board and all parties of record.

According to the APA, a party filing the petition for review of a Growth Management Hearings Board's final decision and order with the Superior Court has thirty days to file an application for direct review and have the case moved to the Court of Appeals. RCW 34.05.518(6). The Home Builders and Kittitas County, not Futurewise, were the parties that filed the petitions for review with the Kittitas County Superior Court

(Superior Court) appealing the Eastern Growth Board's decision.[1] Thus, under the APA the Home Builders and Kittitas County, not Futurewise, would be the proper parties in this case to decide whether they want to seek direct review with the Court of Appeals. Since the Home Builders and Kittitas County were the parties appealing the Eastern Growth Board's final decision and order, those parties should present the issues on appeal and submit the opening and reply briefs in the event this Court grants Futurewise's motion.

It also appears that Futurewise is attempting to forum shop by filing this motion after the Superior Court issued a memorandum decision granting a stay of the Eastern Growth Board's final decision and order. Futurewise filed the certificate for appealability application *after* the Superior Court issued a stay of the Growth Board's decision. *See* Appendix A. In staying the Eastern Growth Board's decision, the Court expressly ruled that it would hear merits of the case and issue a decision within 60 days. *See id.* at 9. It appears that Futurewise did not like the Superior Court's memorandum decision and order granting a stay of the Eastern Growth Board's final decision and compliance proceedings, and is now attempting to send the case to this Court before allowing the Superior

---

[1] Eastern Washington Growth Mgmt. Hearings Bd. Case No. 07-1-0015

Court to decide the merits of the case within the 60-day timeline set forth under the GMA.

In conclusion, the Home Builders believe that the proper forum at this time is the Superior Court. However, should this Court grant Futurewise's motion, the Home Builders believe that they, along with the County, should be the parties presenting the issues for appeal and submitting the opening and reply briefs.

B. Contrary to Futurewise's Argument, Denying the Motion for Direct Review Would Not Be Detrimental to the Parties or to the Public Interest

The APA provides that the Court of Appeals may grant direct review "if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or to the public interest and either: (i) Fundamental and urgent statewide or regional issues are raise; or (ii) The proceedings is likely to have significant precedential value." RCW 34.05.518(3) & (5).

Futurewise claims that its interests, the Home Builders' interests, and the public's interest would be harmed if this Court did not accept its motion for direct review. This claim is simply not supported by the facts or the law.

For example, Futurewise claims that if this Court does not accept its motion, future development will lead to "sprawl, degradation of water

quality, transportation and other public service provision problems, and endanger farming and other natural resource industries, and imperil water rights." *See* Mot. for Discretionary Review at 13. The Superior Court rejected this argument. After reviewing the facts of the case and the law, the Superior Court ruled that the Home Builders and Kittitas County were likely to prevail on the merits. *See* Appendix A at 3-8. Moreover, the Superior Court specifically found that none of the parties challenging the development regulations would be harmed pending the stay and appeal. *Id.* at 8. In addition, the Superior Court expressly found that the public health, safety, or welfare would not be harmed during the appeal. *Id.* at 8-9. Furthermore, the Superior Court found that the Home Builders were likely to prevail on their argument that the Eastern Growth Board erred when it ruled that the County's development regulations violated the GMA by allowing one home per three acres in a portion of the rural areas. *See* Appendix A at 3-8.

Likewise, Futurewise's argument that rapid resolution by this Court would aid the Home Builders' interests is simply a red herring. According to Futurewise, the "long-term business interests of BIAW and other developers are harmed by sprawl zoning." *See* Mot. for Discretionary Review at 14. While the Home Builders appreciate Futurewise's concern for building industry's well-being, this claim is

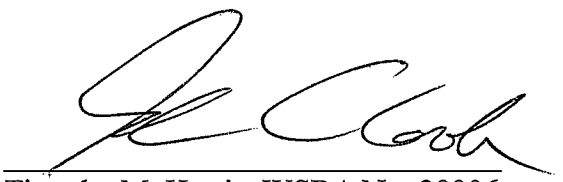
simply nonsensical and is unsupported by the facts and the law. Moreover, the Home Builders would not be appealing the Eastern Growth Board's decision if it in any way positively affected the building industry. Also, as noted above, the Superior Court already indicated to the parties that it would issue a ruling within the 60-day timeline as set forth under RCW 36.70A.305. Thus, rapid resolution would occur if the case remained in Superior Court.

III. CONCLUSION

Based on the foregoing, BIAW submits this answer to Futurewise's motion for discretionary review.

Respectfully submitted this 9th day of July, 2008.

BUILDING INDUSTRYASSOCIATION
OF WASHINGTON



Timothy M. Harris, WSBA No. 29906
Andrew C. Cook, WSBA No. 34004
Attorneys for Petitioners/Intervenors
111 21st Avenue SW
Olympia, WA 98507
(360) 352-7800 - Telephone
(360) 353-7801 – Facsimile
andyc@biaw.com

APPENDIX

A

SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY

CENTRAL WASHINGTON HOME BUILDERS ASSOCIATION, a Washington not-for-profit corporation; BUILDING INDUSTRY ASSOCIATION OF WASHINGTON, a Washington not-for-profit corporation; and MITCHELL F. WILLIAMS, d/b/a MF Williams Construction Co., Inc., Petitioners/Intervenors, vs. EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD, KITTITAS COUNTY CONSERVATION COALITION, RIDGE, and FUTURE-WISE, Respondents, and KITTITAS COUNTY, a Washington municipal corporation, Respondents.	No. 08 2 00195 7 MEMORANDUM DECISION AND ORDER OF STAY

INTRODUCTION

On March 21, 2008 the Eastern Washington Growth Management Hearings Board (Board) issued a Final Decision and Order (FDO) in its Case No. 07-1-0015,

ruling that Kittitas County Ordinance 2007-22 updating the County's developmental regulations was non-compliant with the Growth Management Act (GMA), Chapter 36.70A RCW. The Board also issued a Determination of Invalidity for a number of Kittitas County's development regulations, including Chapter 16.09 KCC (Performance Based Cluster Platting), Chapter 17.08 KCC (Definitions), Chapter 17.22 KCC (UR-Urban Residential Zone), Chapter 17.28 KCC (A-3-Agricultural 3 Zone), Chapter 17.30 KCC (R-3-Rural 3 Zone), and Chapter 17.56 KCC (F-R-Forest and Range Zone).[1] The Board remanded Ordinance 2007-22 back to Kittitas County, directing the County to achieve compliance with the Growth Management Act no later than September 17, 2008 and scheduling a set of deadlines by which it would determine whether Kittitas County had taken the necessary actions to comply with the GMA.

On April 4, 2008 the intervenors (HomeBuilders) filed a Petition for Review seeking reversal of the Board's FDO that pertained to issues[2] 1, 2, 3 and 4.[3] HomeBuilders filed a motion to stay the Board's FDO and compliance proceedings pending review by this court of the Board's FDO. Respondents Kittitas County Conservation Coalition, Ridge, and Futurewise (collectively, Futurewise) oppose the motion to stay. The court heard oral argument on April 21, 2008.

STANDARDS FOR CONSIDERING STAY OF THE DECISION OF AN ADMINISTRATIVE AGENCY PENDING REVIEW

While the court does have the inherent power in appropriate cases to enter a stay of an administrative decision while an appeal is pending, Mentor v. Nelson, 31

---

[1] KCC refers to the Kittitas County Code.

[2] Issue No 1: Does Kittitas County's failure to eliminate densities greater than one dwelling unit per five acres in rural areas outside of the urban growth areas and limited areas of more intensive rural development (LAMIRD) violate RCW 36.70A.020, .040, .070, .110 and .130?

Issue No. 2: Does Kittitas County's failure to prohibit urban uses and urban development in rural areas and the failure to include standards to protect the rural area violate RCW 36.70A.020, .040, .070, .110 and .130?

Issue No. 3: Does Kittitas County's failure to prohibit urban uses in designated agricultural lands of long term commercial significance violate RCW 36.70A.020, .040, .060, .070, .110, .130, and .177?

Issue No. 4: Does Kittitas County's failure to require that all land within a common ownership or scheme of development be included within one application for a division of land violate RCW 36.70A.020, .040, .060, .070, .130 and .177?

[3] Subsequently Kittitas County and others have filed their separate petitions for review.

Wn.App. 615 (1982), the court is guided by the Administrative Procedures Act in particular in determining whether the stay sought is appropriate. Specifically, RCW 34.05.550(2) authorizes a party to seek a stay or other temporary remedy in the reviewing court after it has filed a petition for judicial review. HomeBuilders has filed that motion. However, because the judicial relief sought is for a stay or other temporary remedy from agency action based on public health, safety or welfare grounds, RCW 34.05.550(3) requires the court to deny the stay unless the court determines the applicant is likely to prevail when the court finally disposes of the matter; that without relief the applicant will suffer irreparable injury; that the grant of relief to the applicant will not substantially harm other parties to the proceedings; and that the threat to public health, safety or welfare is not sufficiently serious to justify the agency action in the circumstances.

As the Board's FDO appears to have been based on public health, and safety and/or welfare grounds,[4] the court must analyze HomeBuilders' motion for stay in accordance with RCW 34.05.550(3) to determine whether it has met each of the four requirements; otherwise, the court must deny the motion.

ANALYSIS

1. Whether HomeBuilders are likely to prevail on the merits. Comprehensive plans and development regulations adopted pursuant to the GMA are presumed valid upon adoption by local government. RCW 36.70A.320. The burden rests with the complainant to demonstrate that any action taken by the local jurisdiction is not in compliance with the GMA. In reviewing a GMA decision and action of a local jurisdiction the Board must find compliance unless it determines the action taken by the local jurisdiction is clearly erroneous in view of the entire record before it and in light of the goals and requirements of the GMA. RCW 36.70A.320. In order to deem an action clearly erroneous, the Board must be "left with the firm and definite conviction a mistake

---

[4] See RCW 36.70A.010.

has been committed." Department of Ecology v. Public Utility District No. 1, 121 Wn.2d 179, 201 (1993).

While local governments have broad discretion to develop comprehensive plans and development regulations tailored to local circumstances, that local discretion is bounded by the goals and requirements of the GMA. So, in reviewing the planning decisions of local governments, the Board is instructed to recognize "the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter" and to "grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter." RCW 36.70A.320(1).[5]

From a review of the Board's FDO it appears the Board relied on its decision in Board Case No. 07-1-0004[6] wherein:

> "The Board finds that the densities allowed by regulations Agricultural-3 and Rural-3 are urban in rural element and not in compliance with the Growth Management Act and the County has not developed a written record explaining how the rural element harmonizes the planning goals in the GMA and meets the requirements of the Act."

Critical also to the Board's conclusion was the finding the County had not developed a written record explaining how the rural element harmonizes the planning goals in the GMA and meets the requirements of the GMA.[7] The Board accepted Futurewise's argument that GMA requirements control over goals, that small urban-like lots affect water quality and quantity, that urban growth refers to growth which makes intensive use of land to such a degree as to be incompatible with the primary use of the land for agriculture, that the rural element shall provide densities consistent with rural character, that development regulations shall be consistent with a County's comprehensive plan, that Tugwell v. Kittitas County[8] suggests the size of a lot to produce food or other agricultural products is greater than five acres, that three acre zoning throughout Kittitas

---

[5] Moreover, Boards are to make informed decisions in a clear, consistent, timely and impartial manner that recognizes regional diversity. WAC 242-02-020(1).
[6] Kittitas County Cause No. 07-2-00552-1.
[7] See FDO, page 11.
[8] 90 Wn.App. 1 (1997).

County fails to provide for a variety of rural densities, and that Goldstar Resorts v. Futurewise[9] holds that Growth Boards retain some discretion as to what is urban and what is rural based on local circumstances and the written record, as long as Viking[10] is taken into account. The Board concluded that the densities allowed by the Ag-3 (KCC 17.28) and Rural-3 (KCC 17.30) are urban in the rural element and not in compliance with the GMA and that the County has not developed a written record explaining how the rural element harmonizes the plan and the GMA and meets the requirements of the GMA. The Board also concluded that KCC 16.09, 17.08, 17.12, 17.22, and 17.56 all allow urban-like densities in rural areas and are not in compliance with the GMA.

In reviewing the pleadings presented to the court it appears both the Board and Futurewise have completely ignored by at least what on its face can be considered a written record contemplated by RCW 36.70A.070(5)(a) wherein the County set forth in some detail in Paragraph 8.3 of its Comprehensive Plan a description of current land use patterns in rural Kittitas County as set forth on pages 159 and 160 of the *Kittitas County Comprehensive Plan: December 2006, Volume 1.* And, in hearing the arguments of Futurewise and reviewing the conclusions of the Board, it appears that each is fixated on the notion that just because a parcel of property may be too small to accommodate agriculture or farming it therefore becomes urban in nature. Moreover, relying on Tugwell, supra at 9 for the proposition that the creation of small parcels not large enough to accommodate agricultural activities demonstrates that the three acre zones are too small to farm and therefore are urban, The Board and Futurewise completely misconstrue Tugwell. Tugwell stood simply for the proposition that the County's record on which it relied in establishing a rezone of certain property was supported by substantial evidence of change of circumstances to support the rezone. Tugwell did not stand for the proposition that three acre parcels are urban in nature.

Nor does the statistical analysis presented by Futurewise necessarily support the proposition parcels of five acres or less, because they may be smaller than the statistical average small farm, are therefore urban. Such a conclusion has no basis in fact. Both the Board and Futurewise completely ignore the broader guideline of RCW

---

[9] 140 Wn.App. 378 (2007).
[10] Viking Properties, Inc. v. Holm, 155 Wn.2d 112 (2005).

36.70A.070(5). That subsection, while requiring counties to include a rural element including lands that are not designated for urban growth, agriculture, forest or mineral sources, recognizes that because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of Chapter 36.70A. RCW 36.70A.070(5)(b) requires that the rural element shall permit rural development, forestry, and agriculture in rural areas. That provision also provides that the rural element shall provide for a variety of rural densities, uses, essential public facilities, rural governmental services needed to serve the permitted densities and uses. And to achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character. The County's written record appears to address all those concerns in its Comprehensive Plan at paragraph 8.3.

Rural character is defined in RCW 36.70A.030(15) as:

> (15) "'Rural character' refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:
> (a) in which open space, natural landscape and vegetation predominate over the built environment;
> (b) that foster traditional rural lifestyles, rural based economies, and opportunities to both live and work in rural areas;
> (c) that provide visual landscapes that are traditionally found in rural areas in communities;
> (d) that are compatible with the use of the land by wildlife and for fish and wildlife habitat;
> (e) that reduce the inappropriate conversion of undeveloped land into sprawling, low density development;
> (f) that generally do not require the extension of urban governmental services; and
> (g) that are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas."

Rural development is defined in RCW 36.70A.030(16) as:

(16) "'Rural development' refers to development outside the urban growth area and outside agriculture, forest, and mineral resource lands designated pursuant to RCW 36.70A.170[11]. Rural development can consist of a variety of uses in residential densities, including cluster residential development, at levels that are consistent with preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas."

Finally, urban growth is defined in RCW 36.70A.030(18) as:

(18) "'Urban growth' refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. 'Characterized by urban growth' refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth."

As can be gleaned by the above quoted definitions "rural character", "rural development", and "urban growth" do not necessarily refer to whether a particular parcel of property is farmable or not. Relying, therefore, on a statistical analysis that the average small farm in Kittitas County is 5.62 acres and that therefore anything less than that size is urban in nature belies the definitions and guidelines provided to the County for developing a comprehensive plan and development regulations in connection therewith to define its own rural character, rural development, and urban growth. In fact, the legislature has not defined what constitutes rural density and no case precedent establishes that any parcel less than five acres is necessarily urban in nature.[12]

---

[11] Agricultural, forest lands and mineral resource lands of long term significance for commercial production of food or other agricultural products, commercial production of timber or extraction of minerals, respectively.

[12] It is noted a five acre lot is "decidedly" rural in density. See Whidbey Envtl. Action v. Island County, 122 Wn.App. 1561, 169 (2004) and Skagit Surveyors v. Friends, 135 Wn.2d 542, 571 (1998). "Decided rural density" certainly infers small parcels can be considered rural.

On its face, therefore, this court concludes that based on the matters presented, there is a likelihood that HomeBuilders could prevail on the merits on issues 1, 2, 3 and 4.[13]

2. Whether HomeBuilders will suffer irreparable injury if the stay is not granted. If the stay is not granted the County must comply with the Board's FDO concerning the development regulations. Even though the Board's FDO on the County's Comprehensive Plan and other development regulations in the other case[14] is presently awaiting review with the Court of Appeals, the FDO in that case is stayed, thereby relieving the County of the requirement of amending its Comprehensive Plan. As the Comprehensive Plan is now in a state of abeyance pending review, the County now has FDO invalidated development regulations that may be inconsistent with that Comprehensive Plan. If the County, on the one hand, refuses to comply with the Board's FDO in this case, the County faces sanctions. If the County does comply with the Board's FDO while this case is on review the issues herein can become moot[15] during the interim period of the court review process, including the appeal process, leaving property owners in limbo not being able to develop property under the current development regulations and not being able to develop property under any modified regulations should the County comply with the Board's FDO. Too much uncertainty will cause property owners represented by HomeBuilders' position irreparable harm.

3. Whether granting the motion to stay will substantially harm other parties or threaten public health, safety, or welfare. As pointed out by HomeBuilders, the three acre zones in Kittitas County constitute less than 3% of the entire county. Maintaining the status quo until this case is resolved in conjunction with Kittitas County Cause No. 07-2-00552-1 presently awaiting review by the Court of Appeals and for which a stay is in existence, will not harm Futurewise. Rather, it will allow the orderly review of both

---

[13] While RCW 36.70A.020(10) and RCW 36.70A.070(5)(c)(iv) require the county to protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water, including protecting surface water and ground waters resources, ruling that Chapter 16.04 of the Kittitas County Code violates the GMA by allowing too many exempt wells appears to go beyond the authority of the review parameters of the Board. The Department of Ecology pursuant to Chapter 90.44 RCW regulates ground water, not a Growth Management Board.

[14] Again, Kittitas County Cause No. 07-2-00552-1.

[15] Even if the County enacts compliant development regulations with provisos should it prevail on appeal, the compliant development regulations are no longer in effect.

cases without causing irreparable harm to any of the parties. Moreover, there are adequate safeguards set forth in the development regulations to protect the health, safety, and welfare of the public pending final resolution of these matters.

Futurewise's argument that it will be deprived of the fruits of its victory is not relevant. The issue to the court is whether the Board properly or adequately reviewed and decided the issues concerning the County's developmental regulations, not who won.

4. Conclusion. Based on the foregoing, the court should grant Homebuilder's motion to stay the proceedings pending review. The court on its own motion will accelerate review to decide this case within the next 60 days on a schedule which should accommodate the parties hereto, unless the parties decide this review should await the outcome of the Court of Appeals' review of Kittitas County Cause No. 07-2-00552-1.

CONCLUSION

Homebuilder's motion to stay the proceedings is granted. The court's motion *sua sponte* to accelerate review is also granted. Please present supplemental orders[16] consistent with this decision.

DATED: April 24, 2008

Michael E Cooper
JUDGE

[16] Those contemplating a briefing schedule and a date for oral argument, or stipulation that the parties will await the outcome of the Court of Appeals' decision in Kittitas County Cause No. 07-2-00552-1.

DECLARATION OF SERVICE

I, Andrew C. Cook, declare as follows:

I am a resident of the State of Washington, residing or employed in Olympia, Washington. I am over the age of eighteen years old and am not a party to the above-titled action. My business address is 111 21st Avenue SW, Olympia, Washington, 98507.

On July 9, 2008, true copies of the Central Washington Home Builders Association's, Building Industry Association of Washington's, and Mitchell F. Williams, d/b/a MF Williams Construction Co.'s Answer to Motion for Direct Review were placed in envelopes and sent to:

Tim Trohimovich
Futurewise
814 2nd Avenue, Ste 500
Seattle, WA 98104

Neil A. Caulkins, Deputy Prosecuting Attorney
Kittitas County Courthouse, Room 213
Ellensburg, WA 98926

Gregory S. McElroy
McElroy Law Firm PLLC
1808 N. 42nd Street
Seattle, WA 98103-7511

Martha P. Lantz
Office of Attorney General, Lic. & Admin. Law Div.
P.O. Box 40110
Olympia, WA 98504-0110

Jeffrey D. Slothower

201 W. 7th Avenue
P.O. Box 1088
Ellensburg, WA 98926-1088

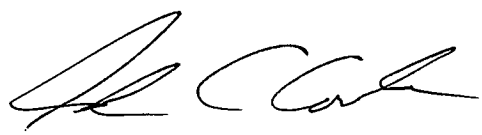
Keith Scully
Gendler & Mann
1424 Fourth Ave., Suite 1015
Seattle, WA 98101

Eastern Washington Growth
Management Hearings Board
15 West Yakima, Suite 102
Yakima, WA 98902

Mr. Alexander W. Mackie
Mr. Patrick W. Ryan
Mr. Eric S. Merrifield
Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099

which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Olympia, Washington.

I declare under penalty and perjury that the foregoing is true and correct and that this declaration was executed this 9 day of July, 2008, in Olympia, Washington.



ANDREW C. COOK